

² The Board notes that, following the August 13, 2021 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal.

FACTUAL HISTORY

On July 30, 2021 appellant, then a 57-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on June 28, 2021 she contracted COVID-19 while in the performance of duty. On the reverse side of the claim form, K.D., a supervisor with the employing establishment, asserted that she was not in the performance of duty when her injury occurred, contending that she was on leave when she contracted COVID-19. Appellant stopped work on June 28, 2021.

A June 28, 2021 diagnostic report from Melody Van Allen, a family nurse practitioner, confirmed that appellant tested positive for COVID-19. In a note of even date, Ms. Van Allen indicated that appellant's estimated isolation end date was July 8, 2021. An employing establishment report of contact also dated June 28, 2021 related that appellant's COVID-19 symptoms reportedly began on June 24, 2021 and that she was using personal protective equipment (PPE) while in contact with patients on June 23, 2021.

In a report of employee's emergency treatment form dated, an unidentifiable health care provider with the employing establishment held appellant off work due to COVID-19 with an expected return date of July 9, 2021.

On June 30, 2021 appellant was seen by Dr. Jeffrey Nahn, a Board-certified emergency medicine physician, who diagnosed pneumonia due to COVID-19.

A July 3, 2021 medical report from Dr. Arjun Iyer, a Board-certified emergency medicine physician, noted that appellant was examined for COVID-19. Dr. Iyer instructed her to follow up with her physician and indicated that her symptoms were expected to continue for up to two weeks.

On July 6, 2021 Dr. Evan Hirsch, a Board-certified emergency medicine physician, noted appellant's ongoing complaints of cough and chest tightness due to COVID-19.

In a July 9, 2021 follow-up note, appellant was seen by Ms. Van Allen for pneumonia and COVID-19 symptoms. Ms. Van Allen indicated that appellant could return to work on July 23, 2021 with modified work duties.

An e-mail dated July 30, 2021 from K.D. noted that appellant reported COVID-19 symptoms on June 28, 2021.

By decision dated August 13, 2021, OWCP accepted appellant's traumatic injury claim for COVID-19. In a separate decision of even date, it denied her claim for COP, finding that she did not report the injury on a form approved by OWCP within 30 days following the injury.

LEGAL PRECEDENT

Section 8118(a) of FECA authorizes COP, not to exceed 45 days, to an employee who has filed a claim for a period of wage loss due to a traumatic injury with his or her immediate superior on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of

this title.³ This latter section provides that written notice of injury shall be given within 30 days.⁴ The context of section 8122 makes clear that this means within 30 days of the injury.⁵

OWCP's regulations provide, in pertinent part, that to be eligible for COP, an employee must: (1) have a traumatic injury which is job related and the cause of the disability and/or the cause of lost time due to the need for medical examination and treatment; (2) file a Form CA-1 within 30 days of the date of the injury; and (3) begin losing time from work due to the traumatic injury within 45 days of the injury.⁶

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish entitlement to COP.

Appellant filed written notice of her traumatic injury (Form CA-1) on July 30, 2021. By decision dated August 13, 2021, OWCP denied appellant's request for COP, as her claim was not filed within 30 days of the accepted June 28, 2021 employment injury. It noted that the denial of COP did not preclude her from filing a claim for disability due to the effects of the accepted employment injury.

Because appellant filed written notice of her traumatic injury claim (Form CA-1) on July 30, 2021, the Board finds that it was not filed within 30 days of the accepted June 28, 2021 employment injury, as specified in sections 8118(a) and 8122(a)(2) of FECA. Accordingly, appellant is not entitled to COP.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish entitlement to COP.

³ *Supra* note 1 at § 8118(a).

⁴ *Id.* at § 8122(a)(2).

⁵ *E.M.*, Docket No. 20-0837 (issued January 27, 2021); *J.S.*, Docket No. 18-1086 (issued January 17, 2019); *Robert M. Kimzey*, 40 ECAB 762, 763-64 (1989); *Myra Lenburg*, 36 ECAB 487, 489 (1985).

⁶ 20 C.F.R. § 10.205(a)(1-3); *see also T.S.*, Docket No. 19-1228 (issued December 9, 2019); *J.M.*, Docket No. 09-1563 (issued February 26, 2010); *Dodge Osborne*, 44 ECAB 849 (1993); *William E. Ostertag*, 33 ECAB 1925 (1982).

ORDER

IT IS HEREBY ORDERED THAT the August 13, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 18, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board